

Honorable Colleen McNally
Presiding Juvenile Court Judge
Maricopa County Juvenile Court
Chair, Committee on Juvenile Courts
C/O Caroline Lauth-Owens
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ARIZONA SUPREME COURT

In the matter of:)	
)	Supreme Court No. R-15-0040
PETITION TO ADD RULE 40.2)	
DUTIES AND RESPONSIBILITIES)	REPLY TO COMMENT
OF APPOINTED COUNSEL FOR)	
PARENT REPRESENTATION)	
_____)	

The Honorable Colleen McNally, Presiding Juvenile Court Judge Maricopa Juvenile Court and Chair, Committee on Juvenile Courts (COJC) and petitioner in this matter hereby replies pursuant to Rule 28(D) to comments requested and received by the Court and to issues raised regarding this petition by the comment filed by the Arizona Public Defender Association (APDA). This reply was approved by the COJC at a special meeting on June 13, 2016.

I. THE STANDARDS PROPOSED BY THIS RULE PETITION ARE CURRENTLY IN PLACE.

The comment does not acknowledge that Administrative Order 2015-40 implementing the same standards that are proposed for adoption in this rule was

signed by Chief Justice Scott Bales on May 7, 2015 and has been in effect since that date. With the exception of this comment, Petitioner is unaware of any other objections to the proposed Rule. Furthermore, the Petitioner is unaware of any problems or difficulties courts have experienced with the implementation of these requirements.

II. THE STANDARDS PROPOSED BY THIS RULE PETITION ARE THE RESULT OF AN AD HOC WORKGROUP (WORKGROUP) OF MULTIDISCIPLINARY STAKEHOLDERS WHO CONSIDERED ALL COMMENTS PROVIDED TO THE WORKGROUP.

In December 2013, the Dependent Children's Services Division, with the support of COJC, created an Ad hoc workgroup (workgroup) of multidisciplinary stakeholders (including the Executive Director of the State Bar of Arizona, judges, attorneys representing parents, children and DES/CPS{now DCS}) to commence a project to develop attorney standards (Standards) for parent representation. The workgroup met throughout 2014 to develop draft Standards. The draft Standards were first presented to the COJC on May 22, 2014. The COJC approved sending "the parent representation standards draft out for comment and move on to AJC for further action."

The Standards were distributed for comment over a six-week period, which ended on July 31, 2014. During the comment period (June 16, 2014-July 31, 2014), Christina Phillis, the author of the Comment to R-15-0040 on behalf of APDA, submitted a comment to the draft Standards on July 14, 2014 "on behalf of the

seventeen parent representative attorneys who work for the Maricopa County Public Advocate Office.” These comments virtually mirror those found in the filing titled *Comment of the Arizona Public Defender Association in Response to Judge McNally’s Request to Add Rule 40.2*. These comments, as well as the other 143 received, were reviewed and considered by the workgroup. The comments were largely in support of the Standards. Some modifications were made to the original draft based on comments received.

The revised Standards were then presented again to the COJC on February 12, 2015. There was no need for an additional comment period as the workgroup had already considered all of the comments received at the COJC’s earlier direction. The COJC first adopted the proposed Standards with the understanding that the Standards would be open for comment; the workgroup would review and consider any comments received and make possible revisions after which time the workgroup would make a recommendation to the COJC regarding the new and possibly revised Standards. At the February 12, 2015 meeting, the COJC approved “the Parent Representation Standards as best practices guidelines to be used in attorney training and forwarded them to the AJC to consider supporting their implementation as Standards through an Administrative Order by the Chief Justice and support filing a rule petition to have them subsequently implemented through Court Rule”.

III. THE STANDARDS PROPOSED BY THIS PETITION WERE APPROVED BY THE SUPERIOR COURT PRESIDING JUDGES AND THE ARIZONA JUDICIAL COUNCIL

The Superior Court Presiding Judges met on March 25, 2015, and the Standards were presented for discussion. Discussion ensued, a few modifications were made, and the Presiding Superior Court Judges passed a motion to “support approval of the general concept of the standards to the Arizona Judicial Council.” The Arizona Judicial Council met the following day, March 26, 2015 and approved the “...attorney standards for parent representation with changes approved by the Superior Court Presiding Judges as best practices and implement through Administrative Order and eventually Court Rule.”

The process in which the Standards were developed, comments solicited, reviewed and considered and the original Standards modified as a result of some of the comments received, was openly shared with each group who considered the Standards.

IV. THE STANDARDS ARE NECESSARY TO SUPPLEMENT AND SUPPORT THE RULES OF PROFESSIONAL CONDUCT IN THIS SUBSTANTIVE AREA OF LAW

The Comment contains extensive arguments that the Standards are unnecessary due to the fact that the Rules of Professional Conduct sufficiently address the requirements for Parent Representation. The right to parent is a constitutionally protected right. “Parents have a fundamental liberty interest in the

care, custody and management of their children.” *Maricopa County Juvenile Action No JS-6520*, 157 Ariz. 238, 241, 756 P. 2d 335, 338 (App. 1988), citing *Sandusky v. Kramer*, 455 U.S. 745, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982).

It is not unusual for the Bar and the Bench to develop additional requirements for specialized cases that effect constitutional rights. For example, Rule 6.8 Arizona Rules of Criminal Procedure, sets forth standards for appointment and performance of counsel in capital cases. In AO 2012-008, the Maricopa County Superior Court issued an order titled, “In the Matter of Adopting a Plan for Review of Appointed Defense Counsel”, that inter alia, addresses requirements for capital defense.

The comment suggests that in the majority of the counties the indigent representation offices determine who is competent to represent parents in dependency matters. It is important for COJC to point out that the majority of the counties do not have indigent representation offices. It is through court contracts that attorneys are appointed to represent parents in dependency matters. Thus, it is the court who should have the ability to determine if an attorney is competent to represent parents in dependency matters.

Lastly, this court adopted Rule 40.1 Rules and Responsibilities of Appointed Counsel and Guardians Ad Litem on September 1, 2011, with an effective date of January 1, 2012. Petitioner is not aware of any problems arising from implementation of the rule.

V. APPLICATION OF STANDARDS

The comment alleges: “Furthermore, the proposal is arbitrary and capricious because it applies only to those attorneys who are court appointed. Privately-retained attorneys are completely exempt from all requirements of the proposal.” The COJC recognizes that the title of the rule presently pending is “Duties and Responsibilities of Appointed Counsel for Parent Representation.” However, the COJC held a meeting on June 13, 2016 to consider whether it would file a reply to APDA’s comment. At that meeting, and in response to this portion of APDA’s Comment, the COJC voted unanimously to expand the scope of the rule to include all counsel for parents i.e. appointed and privately retained.

The committee does not want to take any action that would prohibit the rule from being adopted during the 2016 Rule Cycle. Therefore, in light of APDA’s comment, the committee respectfully requests the court consider expanding the rule beyond appointed counsel to include all attorneys representing parents. The committee is cognizant of the fact that privately retained attorneys might encounter difficulties complying with the training requirements as they may take only a limited number of these cases. Therefore, the committee’s recommendation for expansion of the Standards to privately retained attorneys would not include application of the training requirements in the Standards. Should the court determine that such an

expansion is inappropriate at this time, we urge the court to adopt the rule as currently titled and presented.

RESPECTFULLY SUBMITTED this ____ day of _____ 2016.

By /s/_____

Honorable Colleen McNally
Presiding Juvenile Court Judge
Maricopa County Juvenile Court
Chair, Committee on Juvenile Courts